The Solicitors' Journal

VOL. LXXXVIII. **Saturday, June 24, 1944.** No. 26

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1403.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d., *post free.*

Current Topics.

Permanent Court of International Justice.

ACCORDING to a statement in the Commons by Mr. EDEN on 14th June, the Report of the Informal Inter-Allied Committee on the Future of the Permanent Court of International Justice has been communicated to the Governments of the United Nations for consideration. He said that His Majesty's Government had offered to receive and circulate such observations as any of them might desire to make on the report, and the question of the action to be taken could then be one to be decided by consultation between the United Nations. The method of settling non-justiciable disputes would probably fall to be considered in connection with the future organisation for the maintenance of peace. This report was recently presented to Parliament, and is the product of an international committee under the chairmanship of Sir WILLIAM MALKIN, consisting of members from Belgium, Canada, Czechoslovakia, the French Committee of National Liberation, Greece, Luxembourg, the Netherlands, New Zealand, Norway and Poland. The report is in no sense official, as its object was merely to take advantage of the presence of a number of experts in London in order to find out their opinion on questions connected with the International Court. The view of the committee is that, in general, the statute of the court works well, and should be retained as the general structure of the future court. It proposes that, whether a new court be set up or the existing one continued, the present name and seat of the court should be retained. On the assumption, however, that an international court in some form will be required after the war, the committee holds that it will not be sufficient to rely on the automatic continuance and functioning of the existing Permanent Court of International Justice. A new international agreement will be needed, whether the object be to set up a new permanent court or merely to continue the old one in existence. On the other hand, the existing connection between the court and the League of Nations should be discontinued and should not, for the present at any rate, be replaced by an organic connection with any new international organisation. This need not exclude all connection between the court and the international organisation. The court would be part of the machinery at the disposal of the organisation; and the constitution of the organisation might lay down the conditions in which its members would be bound to have recourse to the court, and provide measures for ensuring that the decisions of the court are complied with.

The Judges.

THE committee recommends that the requirements of art. 2 of the existing Statute of the Court should be maintained as they stand, so that the court would be composed of "a body of independent judges, elected regardless of their nationality from amongst persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law." It is thought desirable that a certain balance should be maintained between those judges possessed of previous general judicial experience and those having a specialised knowledge of international law. There has been a tendency for the former to be under-represented, and some increase in the proportion of judges who have had judicial experience in their own countries is desirable. It is stated that any specific attempt, such as that made in art. 9 of the Statute, to secure the representation of particular legal systems, as such, should be abandoned. If the principle of selecting the best available candidates is acted on, it will almost inevitably result that different schools of thought would in practice find representation, and no special steps to secure this end would be necessary. The committee considers that the present number of fifteen judges is too high to be conducive to the satisfactory working of the court and should be reduced to nine, exclusive of *ad hoc* judges. It is stated that the existing rule, which permits judges of the nationality of any of the parties to a case to sit in the case, and also provides that any party may, if there is no judge of its nationality on the court, appoint some person (known as a "national" or *ad hoc* judge) to sit in the case, should be maintained. In order to spread interest in the court, and to give a more permanent and assured position to the national judges, each country party to the Statute should nominate one candidate, who, as such, would, *ipso facto*, become a member (though not a judge) of the court and the national judge of his country. These national judges would also be available to sit when required as supplementary judges of the court to make up the number of nine, and for other purposes.

Jurisdiction of the Court.

THE report states that it should be open to all States, whether or not members of the future general international organisation, to become parties to the Statute of the Court; but no country should be permitted to have recourse to the court if it is not a party to its Statute. The committee hold that it is of prime importance that the jurisdiction of the court should be confined to matters that are really "justiciable," and that therefore all possibility should be excluded of the court being used to deal with cases which are essentially political in their nature and require to be dealt with by political means. The Statute, it is said, should contain no provision making the jurisdiction of the court compulsory for the adhering States. On the other hand, there would, as at present, be nothing to prevent countries voluntarily accepting compulsory jurisdiction by other means, either generally or in defined cases, e.g., under particular bilateral or multilateral conventions in regard to disputes arising thereunder, or by means of a general agreement between two or more States to have recourse to the court in justiciable disputes arising between them, or by acceptance of the existing "optional clause," which should be retained. There would equally be nothing to prevent compulsory recourse to the court being made a condition of membership of any future general international organisation, to such extent and on such terms as its members thought proper and decided to lay down in the constitution of the organisation. In such event the constitution of the organisation could also set out the means whereby the decisions of the court in these cases should be enforced. The committee further is of the opinion that the court's jurisdiction to give advisory opinions should be maintained, but the right to ask for such an opinion should not be confined to the executive organs of any future general international organisation, and should be extended to all international associations of an inter-State or inter-governmental character possessing the necessary status, and to any two or more States acting in concert. The question of the languages of the court, according to the committee, is one of principle and should be dealt with in the Statute, except that the question of translations or interpretations from one language to another in the course of the written pleadings or oral hearing should be left to be settled by the court. The existing rule that French and English are the official languages of the courts should be retained. The majority rule for decisions should be maintained, despite the fact that it may result in decisions being given by a majority of only one. The right to give dissenting judgments is of great value and should be retained. Further, all judges, whether of the majority or the minority, should state their views in separate judgments, though it would remain open to any two or more of them to combine in a common judgment. On the question of appeals the committee thinks that the existing provision of the Statute that the decisions of the court are final should be maintained. On the other hand, it may be found desirable to confer on the court some sort of appellate jurisdiction from tribunals which may be set up under the Peace treaties to deal with certain questions arising thereunder, analogous to the Mixed Arbitral Tribunals

set up after the last war, with the object of securing uniformity of jurisprudence in the interpretation and application of the relevant provisions of the Peace Treaties. No direct right of appeal to the court from the actual decisions, as such, of these tribunals should be established. On the other hand, it would be possible to set up a procedure whereby the opinion of the court on matters of treaty interpretation or international law could be obtained for the guidance of the tribunals concerned. The committee, in boldly facing the problems presented to it, has determined that the only method of securing future progress is to build on the firm foundations of past achievement. It does not, however, claim to have solved the problem of how to abolish war, and the difficulties of drawing a boundary line between justiciable and essentially political disputes may well be at the centre of that problem.

Post-war Employment and Emergency Legislation.

THERE are interesting legal implications of the Government's statement of employment policy in the White Paper presented to Parliament last month by the Minister of Reconstruction. Employment, as the foreword rightly points out, cannot be created by Act of Parliament or by Government action alone. Legislation will, however, be required to confer powers needed for the purpose of bringing about conditions favourable to the maintenance of a high level of employment, and the White Paper states that the success of the policy will ultimately depend on the understanding and support of the community as a whole. Not least, one may infer, does it depend on the co-operation of lawyers, who can do so much to bring about that respect by the citizen for the law which results from a comprehension of its underlying reasons. It is almost a truism that without international co-operation most national effort in the direction of full employment is futile. National effort, as the Chancellor of the Exchequer suggested in his Budget speech, can be directed by means of taxation policy towards the development of industrial research and towards modernising plant, machinery and buildings. One of the major dangers ahead is that of inflation, which may well become serious if there is uncontrolled spending as a result of relaxing from the discipline of war. Rationing and price control must therefore be continued in due measure for a while after the war, so that those who cry out for an immediate abolition of those complicated rules and orders which are said to hamper free enterprise will be disappointed, for some time at any rate. Moreover, the use of capital will have to be controlled "to the extent necessary to regulate the flow and direction of investment" and "access to the capital market will have to be controlled in order to ensure the proper priorities." This seems to cover a wide field of emergency legislation including the Defence (Finance) Regulations. Another danger, the White Paper states, is that production of unessential goods may interfere with the production of essentials. "In order to direct the efforts of industry towards the right tasks in the right order it will be necessary to establish certain broad priorities and to enforce them for a time by means of the issue of licences, the allocation of raw materials, and some measure of control over the labour and staff required for industry." This appears to envisage Limitation of Supplies Orders and Essential Work Orders, modified to meet the needs of peace. The struggle to restore exports will need careful regulation of imports and management of our exchange resources. The problems of local unemployment will have to be attacked "(*a*) by so influencing the location of new enterprises as to diversify the industrial composition of areas which are particularly vulnerable to unemployment; (*b*) by removing obstacles to the transfer of workers from one area to another and from one occupation to another; and (*c*) by providing training facilities to fit workers from declining industries for jobs in expanding industries." These aims, too, seem to envisage substantial legislation. The truth is that the word "war" is not synonymous with the word "emergency," and the emergency will inevitably continue for some little time after the restoration of peace. Lawyers must therefore expect to have emergency legislation with them for some time to come.

Note-taking in Court.

A SOMEWHAT unusual request was made at Kingston Borough Petty Sessions on 30th May by a solicitor appearing for a defendant. During the evidence of a policeman the solicitor asked him to speak more slowly so that he could take a note of what he was saying. The clerk to the justices retorted that he had never heard such a request before. All the evidence in that court was taken in shorthand and he could not agree that the witnesses should go at longhand speed. The solicitor replied that it was the first time in that court that the request had been refused. The request was constantly made in other courts—assizes, county and police courts—and he had never known it refused. If it were it would place the defence at a great disadvantage. The fact that the clerk provided a shorthand writer did not enable a defending solicitor to take down sufficient of the evidence for cross-examination. The magistrates decided that any particulars taken in shorthand could be read over on request. That would be much better than if the solicitor had to write it in longhand. Advocates appreciate that while it is usually possible to take down all the material evidence of the average witness, there appears in the witness box from time to time the voluble, rapid-speaking type, who is the despair of the prosecution, the bench and even the shorthand writer at times. In such cases the bench usually adopt a helpful attitude to the defence, and a golden mean is found which the witness is exhorted to follow. It is to the credit of the bench that this sort of difficulty rarely arises. The slowness of taking depositions in longhand led justices at one time to indulge in all sorts of irregular methods in order to save time, as was apparent from the cases of *R.* v. *Slinger* (1930), referred to in 79 SOL. J. 115; *R.* v. *Christopher*, 14 J.P. 83; and *R.* v. *Watts*, 27 J.P. 821. The use of shorthand in the courts is more prevalent than is generally thought, many advocates and even some judges being masters of this art. Those who are unfortunately ignorant of it have to use such abbreviations as they may be able to devise to help them out. In any case, defending counsel is unable to take any sufficient note of the results of his cross-examination, and if his memory fails on any point the only recourse is to any shorthand note that may be taken.

"Benjamin on Sale."

THERE are few lawyers to-day who have not sometimes had recourse to that monument of legal genius and industry, "Benjamin on Sale." Perhaps even fewer lawyers are fully aware of the unique career of its author, JUDAH P. BENJAMIN, whose memory, even to-day, sixty years after his retirement from the English Bar and nearly eighty years after his departure from America, forms one of the strongest common bonds between this country and the United States of America. The December, 1943, issue of *The North Carolina Law Review* contains an appreciation by Mr. JAMES H. WINSTON, of the Chicago Bar, of a biography of BENJAMIN, written by Professor ROBERT D. MEADE, and published in New York by the Oxford University Press. BENJAMIN, born of impecunious parents in 1811 in the British West Indies, had before 1852 become "the unquestioned leader of the bar of the fast-growing metropolis of New Orleans." In 1852 he was elected to the United States Senate as a nominee of the Whig party, and "during the eight years that he was a senator he argued more cases before the United States Supreme Court, next to Reverdy Johnson, than any other lawyer." In 1853 he declined an appointment as Justice of the Supreme Court. Jefferson Davis, previously his bitter opponent, chose him as his right-hand man in his Confederate Cabinet, in which he served faithfully until its collapse in 1865. The surrender at Appomattox meant the flight of the Cabinet, and with them Benjamin, who managed to get to the Florida coast, and escape to Havana. America's loss became England's gain, and a few months after his arrival in England in 1865 he was called to the Bar, the rules of the Inns having been specially relaxed in order to do so. While waiting for work, he wrote his great work on Sale. By the time of his retirement in 1883, to quote the reviewer, he had become "the absolute leader of the British Bar," and at a farewell banquet on his retirement given by the Attorney-General and the entire Bar, the Lord Chancellor and the Lord Chief Justice generously expressed the affection of the Bar and its regret at his leaving. Many of us have had the pleasure recently of conversing with American lawyers who are over here on some extra-legal business. That pleasure is enhanced by the re-discovery of legal predecessors whom we can both claim.

Site for Static Water Tank: Compensation.

A SHORT report in the *Estates Gazette* for 27th May, 1944, of a case heard by the General Claims Tribunal on 11th May provides some interesting information on the right method of approach to a problem of a not uncommon character. Part of a bombed site had been used by the authorities for the purposes of a static water tank, and the freehold owner of the site claimed compensation at the rate of £25 per annum, because, as she alleged, the whole site could have produced that yearly sum if it had been devoted to the raising of poultry, or other purposes not specified by the claimant. The value of the land was put by the claimant at £300, and she stated that if it had not been for the tank she would have been able to sell it at that price. The claimant's husband gave evidence that the amount which he himself would have paid for the land at the date of requisitioning was 5s. per week. The district valuer for the area concerned said that the site was the small front garden and front portion of a dwelling-house, about 117 square yards in all. The whole of the site had had to be cleared owing to bomb damage. In none of the thirty-seven cases of houses demolished within a half a mile radius of the requisitioned land had the cleared sites been let, but there were nineteen cases of the local council having taken over the back garden and let it for allotment purposes at 1s. a rod for fenced land, and 6d. per rod for unfenced land, where there was no water. In the present case only two rods were capable of being dug. The ground rent in normal times would have been about £8 per annum. At the date of requisitioning, the valuer said, there would have been no demand for the site on building lease. Five hundred similar cases had been settled by him at figures ranging from £1 to £1 1s. for the whole site. The tribunal awarded the claimant compensation at the rate of £1 per annum and made no order as to costs.

Taking Accounts.

As is probably widely appreciated, appeals to the Judicial Committee of the Privy Council, as befits the highest tribunal for appeals from the Empire, generally involve substantial questions of either legal or general importance, and on more than one occasion the Board had expressed dissatisfaction at their time being occupied with obviously trivial matters or cases in which their decision would in the particular circumstances prove of no practical effect. These informal protests, a vindication of the status, importance and dignity of the court, though necessarily somewhat rare, more rarely still receive the light of publicity, and it may prove of value to practitioners of both branches of the profession to indicate at least one aspect of this matter which has received attention of late. Two years ago, Lord Romer, giving the judgment of the Board in an appeal which involved questions whether in taking the accounts of a partnership on dissolution certain items should or should not be allowed on one side or the other, said: "They are purely questions of fact. It is not, and cannot be, suggested that they involve any question of principle whatsoever. Such being the case, they most emphatically are not questions that ought to be made the subject of an appeal to His Majesty in Council." It was not either right or proper, he added, that the Board should in that way be required to take partnership or any other accounts, but it was, of course, another matter if a question of principle was involved. But where that was not the case the decision of the court below on the various items of an account should be treated as conclusive unless the appellant could prove that the decision was beyond all question erroneous. An interesting, practical and informative sequel to this rule of practice occurred as recently as 17th May last, when another appeal which, in substance, also concerned only the inclusion or exclusion of items in making up a partnership account on dissolution, came before the Board (Lord Thankerton, Lord Wright and Sir Madhavan Nair). After counsel for the respondent had raised a preliminary objection that, on the basis of Lord Romer's observations in the previous case, the questions raised in the appeal were not such as ought to be the subject of an appeal to His Majesty in Council, counsel for the appellant sought to justify his right, in the circumstances of the case, to have the appeal heard. Lord Thankerton, delivering the judgment of the Board, and founding on "the principle laid down . . . by Lord Romer," said that the questions were of the type which should not be entertained by their lordships by way of appeal, and that they were of opinion that "the appeal should not be allowed to proceed as not presenting . . . proper subject-matter for an appeal to His Majesty in Council." The significance of this last ruling is, of course, the jumping of the somewhat wide gap between protesting, however emphatically, that such questions "ought not to be made the subject of an appeal" and an actual refusal to hear an appeal involving such matters. Doubtless, litigants and their advisers will in future proceed with caution before lodging appeals where such questions of accounting are alone involved, but, as is so often the case where the human element comes in, an appellant may quite conscientiously believe that, in the words of Lord Romer, "he can prove that the decision is beyond all question erroneous," and thus still insist in placing his case before the Board.

A Conveyancer's Diary.

Joint Tenancy of Land.

THE treatment of joint tenancy of land by the property legislation of 1925 is radically different from that of tenancy in common. The intention, no doubt, was to extirpate tenancy in common; thus L.P.A., s. 1 (6), prohibits it from existing save in certain very restricted ways. But the authors of the legislation desired to retain joint tenancy of legal estates, that being the mode in which trustees hold. I am not sure that it was really necessary for anything to be done about equitable joint tenancy, because the requirement of the unities (especially that of title) saved joint tenancy from making such difficulties with titles as flowed from the repeated sub-division and settlement of undivided shares. For better or worse, however, the framers of the Acts did decide to abolish equitable joint tenancy of *unsettled* land and to impose a trust for sale upon the legal estate in all land so held (L.P.A., s. 36 (1)). Even this change is subject to a restriction, introduced into L.P.A., s. 36 (2), by the Amendment Act of 1926, whereby it is declared that nothing in the Act affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held on trust for sale. Thus, while the statutory trusts in their application to tenancy in common continue to affect the land until the trust for sale has been exercised or until the land is by some act deliberately freed from them, they expire if and when only one of the joint tenants survives.

A major point in connection with joint tenancy is that there are no transitional provisions, except where one or more of the joint tenants was an infant at the end of 1925, as to which see below. The position is thus entirely different from that which affects tenancy in common. There, one must see how the title stood on 31st December, 1925, applying the old law. But with joint tenancy the only provisions are in the body of the Act, and thus they only apply from the moment at which the Act was in force. The law to be applied to the limitations is thus the "new" law. Much the most important of these provisions is L.P.A., s. 36 (1), which enacts: "Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held on trust for sale, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity." The first question to be settled is thus whether the legal estate is settled land. If it is, s. 36 does not apply at all, and one must refer to certain provisions of the Settled Land Act noticed below. This question has to be decided under the "new" law. Thus, in *Re Gaul and Houlston* [1928] Ch. 689, the leading case on this whole subject, a legal estate was held at the end of 1925 and the beginning of 1926 by beneficial joint tenants subject to a prior charge for £1,000 created many years earlier in consideration of marriage. This charge was such that, leaving aside any questions arising from beneficial co-ownership, the land would not have been settled land under the "old" law, but would be so under the "new" law by reason of S.L.A., s. 1 (1) (v). If the beneficial interest had been a tenancy in common there would have been no doubt but that the legal estate would have vested in the beneficial owners on the statutory trusts under sub-para. (2) of para. 1 of Pt. IV of Sched. I of the Act, on the footing that it was not settled land at the last moment of 1925. Having been subjected to the statutory trust for sale at the first moment of 1926, it would thus never have become settled land at all. But with joint tenancy it is otherwise. Section 36 (1) has to be applied as at the beginning of 1926, and from that moment land thus situated became settled land by reason of the charge. Hence s. 36 (1) does not apply at all. This difference may well be of considerable practical importance; although the legal estate will go to the beneficial owners as persons jointly having the powers of a tenant for life, the persons to give a receipt for purchase-money would be the trustees of the settlement, who would probably turn out to be the trustees of the instrument creating the family charge; but the former beneficial owners could themselves have given a good receipt if they had become statutory trustees.

In dealing with an abstract going back to 1925 or earlier and showing a joint tenancy existing at the end of 1925 and the beginning of 1926, one must thus take one's stand as at the beginning of 1926, so as to see what happened about the statutory trusts. Where the beneficial joint tenancy was created later than that, s. 36 (1) causes the statutory trusts to be attached to the legal estate at the moment when the joint tenancy takes effect. Section 36 (1) is quite different in form from s. 34, which applies to tenancy in common: s. 34 has reference to assurances (conveyances, devises, and so on), providing that they are to take effect in such and such a way. But s. 36 makes no reference to any assurances and merely provides that a legal estate held for beneficial joint tenants is to be held on trust for sale "in like manner as if the persons beneficially entitled were tenants in common"; the last words seem merely to incorporate the statutory trusts of s. 35.

Section 36 (1) attaches the statutory trusts to legal estates which are "beneficially limited to or held in trust for" joint tenants: it is not confined to cases where the legal estate itself is held by joint tenants. Thus, if a legal estate stands limited to A on trust for B and C as joint tenants, A would become a statutory trustee, and would have to appoint a co-trustee before he could give a receipt for capital money. Conversely, the sub-section does not apply unless the beneficial interest is vested in joint tenants, even though the legal estate may be held by joint tenants. Thus, if A provides the purchase-money but takes a conveyance into the joint names of A and B, there would be a resulting trust for A in severalty (in the absence of any facts raising a presumption of advancement), and the legal estate would be held by A and B on a direct trust for A and not on trust for sale. I think that we tend too readily to assume that a conveyance to joint tenants necessarily and always calls the statutory trusts into being. Actually, one cannot say whether s. 36 (1) applies unless one investigates the beneficial interests.

One or two further points of detail arise. There is nothing corresponding to the parts of the transitional provisions and of L.P.A., s. 34, which deal specially with the case where there are more than four tenants in common. But it seems that the effect of Trustee Act, s. 34 (2), is to make the first four persons named in the instrument creating the joint tenancy trustees for sale to the exclusion of the others. Again, while the provisions dealing with tenancy in common themselves make express provision preventing an infant from becoming a statutory trustee, the enactments with reference to infant joint tenants are to be found among provisions relating to the position of infants. Thus, L.P.A., s. 19 (1) and (2), provide that if one of several joint tenants is an infant the adults are to become statutory trustees, but that if all the joint tenants are infants the land becomes settled land. Section 19 only applies to joint tenancies coming into existence after 1925. Where a joint tenancy existed at the

end of 1925, one or more of the joint tenants being an infant, there are some special transitional provisions in Pt. III of Sched. I of the Act.

Where the land is settled land and the beneficial interest is vested in joint tenants, the position is regulated by the Settled Land Act, 1925. Under s. 19 (2) of that Act two or more persons of full age who are both tenants for life in the strict sense, as defined in s. 19 (1), "together constitute the tenant for life for the purposes of this Act." The definition of "tenant for life" for the general purposes of the Act, contained in s. 117 (1) (xxviii), says that the expression includes "a person (not being a statutory owner) who has the powers of a tenant for life under this Act." I conceive, therefore, that if there are two or more persons entitled as joint tenants to an interest which makes each of them entitled to the powers of a tenant for life under s. 20, the two of them together constitute the tenant for life for the purposes of the Act. Thus, where the land is settled land and there is a beneficial joint tenancy, the statutory trusts do not come into consideration at all.

Finally, one must remember that the enactments which we have been discussing only apply where there is a beneficial joint tenancy of one sort or another. The joint legal estate of trustees continues in the same position as of old, except that any attempt at severance of such an estate is rendered ineffective by the first paragraph of s. 36 (2) or by s. 36 (3), or both.

The provisions relating to joint tenancy have worked extremely well, so much so that *Re Gaul and Houlston* is the only reported case of any general importance concerning them. The few others are all on matters of detail and are of little interest.

Landlord and Tenant Notebook.

Perpetual Renewal.

THE decision in *Green* v. *Palmer* (1944), 88 SOL. J. 195, is an interesting addition to the authorities on the question whether a tenant's option to renew is to be construed as entitling the tenant to renew once only, or whether it is to be a feature of each successive tenancy, i.e., until the 2,000 years now prescribed by the Law of Property Act, 1922, Sched. XV, is exhausted.

There was at one time supposed to be a presumption against perpetual renewal; but, if so, it was a presumption the strength of which it was difficult to gauge. *Swinburne* v. *Milburn* (1884), 9 App. Cas. 844, however, contained a reasonably clear statement of the position. In that case Lord Selborne said: "I am not inclined to adopt the language which is to be found in some authorities, to the effect that there is a sort of legal presumption against a right of perpetual renewal in cases of this kind; but those authorities certainly do impose upon any one claiming such a right the burden of strict proof, and are strongly against inferring it from any equivocal expressions which may fairly be capable of being otherwise interpreted." Lord Blackburn in his speech emphasised that technical words would not be required, that the words "for ever" would not be necessary; Lord Fitzgerald's description of the position was: "we can only recognise that the alleged presumption to the extent that the party claiming this peculiar perpetual interest has the onus cast on him of showing with reasonable clearness from the terms of his deed that the covenant he relies on was intended by the parties to be a covenant for perpetual renewal."

Of the numerous previous authorities cited in the course of *Swinburne* v. *Milburn*, two appear to give the best illustrations of the attitude of the courts. In *Iggulden* v. *May* (1804), 7 Ea. 237, Lord Ellenborough dealt with a case in which a twenty-one year lease had been granted in 1783, the landlord covenanting that at the end of eighteen years of the said term of twenty-one years, or before, upon request, etc., he would make, seal and deliver unto the tenants, their executors, etc., *a* new lease of the said, etc., for the like time and term of twenty-one years at the like yearly rent, etc., with *all* covenants, grants and articles as in the then present indentures contained." Trouble arose when the tenants' successor exercised his option and the landlord's successor tendered a draft lease which did not repeat the covenant for renewal. In an unusually lengthy judgment the learned chief justice, after examining many older authorities, held in favour of the landlord on the principle that the reasonable sense and construction must be applied, the main points being (*a*) the use of the singular: *a* new lease, which was the same as one new lease; (*b*) the "with all covenants," etc., was capable of meaning only covenants relative to the enjoyment of the property; (*c*) if successive leases had been contemplated, there would have been some such words as "and from time to time" added. One cannot consider these points very convincing in themselves; with regard to (*a*), the observation seems called for that the landlord was not expected to grant more than one lease at a time; (*b*) seems to do violence to the meaning of the word "all"; (*c*) merely recognises that there is a presumption. And such a case as *Hare* v. *Burges* (1857), 4 K. & J. 45, also mentioned in Lord Selborne's speech, shows how the presumption can be rebutted by words; it was strenuously but unsuccessfully contended that a covenant for renewal specifically stating "including this covenant" did not give the covenantee a right of perpetual renewal.

In *Green* v. *Palmer* a house at Llandudno was let furnished, by an agreement made 1st July, 1940, for a period 9th July, 1940–7th January, 1941, the agreement including the following provision: "The tenant is hereby granted the option of continuing the tenancy for a further period of six months on the same terms and conditions, provided the tenant gives to the landlord in writing four weeks' notice of his intention to exercise the option." Rent (three guineas a week) was made payable to a firm of estate agents; the landlord undertook repairs to the house, the tenant repairs to and upkeep of the furniture (scheduled); and there was a peculiar clause by which both parties agreed that if the tenant took the house on a future occasion or introduced another tenant the letting should be done "through the agency," the effect of which was, as Uthwatt, J., observed, open to dispute.

Applying the rule as stated by Lord Selborne to the above circumstances, and stressing the fact that only one continuation was provided for by the clause itself, the learned judge came to the conclusion that the tenant had a right to go on for one further six months only.

In accepting Lord Selborne's statement, Uthwatt, J., said that he did so "subject to the observation that it is not a question of proof but of reading the document in the light of the surrounding circumstances, equivocal expressions not being construed as conferring a perpetual right of renewal." The reason for this qualification is, no doubt, that questions of construction are questions of law, and such expressions as "the burden of strict proof" and "inferring," used by Lord Selborne, suggests the solution of problems of fact. This may be so, but when one analyses the position one sees that construction is in the last resort concerned with ascertaining intentions, and an intention is a fact. And when an intention is negatived because of the existence of landlord's obligations and tenant's obligation of the kinds referred to in *Green* v. *Palmer*, this is essentially because in fact such obligations are inherently unlikely to be undertaken by people contemplating a tenancy possibly to last 2,000 years. Judicial notice may well be taken of the fact that furniture (especially when used) can hardly be expected to last as long as that, and I believe that in most of the cases in which the point has been decided against the tenant inherent probabilities have played a part, so that the process of construing does involve the use of powers of inference from facts.

One argument put forward on behalf of the tenant was that there had actually been more than one renewal since the original term had expired. Uthwatt, J., held, however, by reference to *North Eastern Railway Co.* v. *Hastings* [1900] A.C. 260, that the construction which parties themselves put upon an agreement by their conduct does not in any way affect the construction proper to put on it. The authority cited was one in which the words of the instrument (a lease granting wayleaves) were plain and unambiguous, and in the present case one would have liked to see some reference made to such decisions as *Hussey* v. *Horne-Payne* (1879), 4 App. Cas. 311, and *Bristol, etc., A.B.C. Co.* v. *Maggs* (1890), 44 Ch. D. 616, in which the conduct of the respective parties was held to negative the proposition that earlier letters evidenced completed bargains as by their terms they purported to do. "Having *treated* the two letters as part of an incomplete bargain, it would be most *inequitable* to allow them [the plaintiffs] to say 'Although we thus treated the matter as incomplete and a negotiation only, yet the defendant had no right to do so, but was bound by a completed contract,'" is a passage from the judgment in the later case applying the decision in the earlier one. Of course, it does not follow that a landlord who has treated an option as one for perpetual renewal is inequitable in subsequently insisting on the more limited construction, but the point is worth exploring.

A feature of the tenancy agreement in *Green* v. *Palmer* which does not appear to have affected the issue was that while the term from a 9th July to a 7th January the option spoke of a "further period of six months." The term being neither six calendar months nor twenty-four weeks, it would be interesting to know how the parties computed the earlier renewals. I mention this because readers will no doubt have come across problems arising out of tenancies, especially furnished tenancies, in which the habenda name months but the reddenda measure the rent by the week.

Notes and News.

Honours and Appointments.

The King has appointed Mr. CHARLES MACKINTOSH, K.C., Sheriff of Inverness, Elgin, and Nairn, to be one of the Senators of the College of Justice in Scotland, to fill the vacancy due to the death of Lord Wark.

The Lord Chief Justice has just made a tour of the Borstal institutions at Lowdham Grange and North Sea Camp, and the prison at Lincoln, in order to obtain first-hand information of the methods used.

COUNTY COURT CALENDAR FOR JULY, 1944.

Circuit 1—Northumberland
HIS HON. JUDGE RICHARDSON
Alnwick,
Berwick-on-Tweed,
Blyth, 17
Consett, 21
Gateshead, 11
Hexham,
Morpeth,
††Newcastle-upon-Tyne, 12 (R.B.), 13, 14 (J.S.), 20 (B).
North Shields, 27
Seaham Harbour, 24
South Shields, 19
Sunderland, 12, 13 (R.B.), 26.

Circuit 2—Durham
HIS HON. JUDGE GAMON
Barnard Castle,
Bishop Auckland, 25
Darlington, 12, 26
*Durham, 11 (J.S.), 24
Guisborough, 19
Leyburn, 17 (R.)
††Middlesbrough, 6, 20 (J.S.)
Northallerton, 27
Richmond, 13
††Stockton-on-Tees, 4,18
Thirsk, 20 (R.)
West Hartlepool, 5

Circuit 3—Cumberland
HIS HON. JUDGE ALLSEBROOK
Alston, 21
Appleby, 15 (R.)
††Barrow-in-Furness, 5, 6
Brampton,
*Carlisle, 19
Cockermouth, 13
Haltwhistle,
*Kendal, 18
Keswick,
Kirkby Lonsdale, 11 (R.)
Millom, 10
Penrith, 20
Ulverston, 4
††Whitehaven, 12
Wigton,
Windermere, 6 (R.)
*Workington,

Circuit 4—Lancashire
HIS HON. JUDGE PEEL, O.B.E., K.C.
Accrington, 20
††Blackburn, 3, .0, 24 (J.S.), 26 (B.)
††Blackpool, 5, 6, 12, 14 (R.B.), 19 (J.S.)
Chorley, 13
Darwen,
Lancaster, 7
††Preston, 4, 18, 25 (J.S.), 28 (R.B.)

Circuit 5—Lancashire
HIS HON. JUDGE HARRISON
††Bolton, 12, 19 (J.S.), 26
Bury, 10 (J.S.), 17
*Oldham, 6, 13, 20 (J.S.)
*Rochdale, 14 (J.S.), 21
*Salford, 4, 7 (J.S.), 18 (J.S.), 24, 25

Circuit 6—Lancashire
HIS HON. JUDGE CROSTHWAITE
HIS HON. JUDGE PROCTOR
††Liverpool, 3, 4, 5, 6, 7, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28
St. Helens, 5, 19
Southport, 4, 18
Widnes, 21
*Wigan, 6, 20

Circuit 7—Cheshire
HIS HON. JUDGE BURGIS
Altrincham, 5 (J.S.), 19
*Birkenhead, 5 (R.), 12, 19 (R.), 21, 25 (J.S.), 26 (R.), 27
Chester, 4
*Crewe, 7
Market Drayton, 14
Nantwich, 28
*Northwich, 13
Runcorn, 11
*Warrington, 6, 20 (J.S.)

Circuit 8—Lancashire
HIS HON. JUDGE RHODES
Leigh,
(*List not received.*)
††Manchester, 3, 4, 5, 6, 7 (B.), 10, 11, 12, 13, 17, 18, 19, 20, 21 (J.S.), 24, 25, 26, 27, 31

Circuit 10-Lancashire
HIS HON. JUDGE RALEIGH BATT
*Ashton-under-Lyne, 7, 14, 31 (B.)
*Burnley, 27, 28
Colne,
Congleton, 21
Hyde, 19
*Macclesfield. 6 (B.), 11
Nelson, 26
Rawtenstall, 12
Stalybridge, 20 (J.S.).
*Stockport, 4, 5 (J.S.), 18, 28 (J.S.)
Todmorden, 25

Circuit 12—Yorkshire
HIS HON. JUDGE NEAL
*Bradford, 13, 14 (J.S.), 26
Dewsbury, 24
*Halifax, 20, 21
*Huddersfield, 18, 19
Keighley, 11
Otley, 12
Skipton, 10
Wakefield, 4 (R.), 25

Circuit 13—Yorkshire
HIS HON. JUDGE ESSENHIGH
*Barnsley, 5, 6, 7
Glossop, 19 (R.)
Pontefract, 17, 18, 19
Rotherham, 25, 26
*Sheffield, 4 (J.S.), 7 (R.), 11 (J.S.), 13, 14, 20, 21, 27, 28

Circuit 14—Yorkshire
HIS HON. JUDGE STEWART
HIS HON. JUDGE ORMEROD
Easingwold,
Harrogate, 14 (R.), 21
Helmsley,
Leeds, 5, 6 (J.S.), 12, 19, 20 (J.S.), 26
Ripon, 18
Tadcaster, 11
York, 4, 25

Circuit 16—Yorkshire
HIS HON. JUDGE GRIFFITH
Beverley, 6 (R.), 7
Bridlington, 3
Goole, 4 (R.), 18
Great Driffield, 17
††Kingston-upon-Hull, 10 (R.), 11 (R.), 12, 13, 14 (J.S.), 17 (R.B.), 24 (R.)
New Malton, 19
Pocklington,
*Scarborough, 4, 5, 11 (R.B.)
Selby,
Thorne, 20
Whitby, 5 (R.), 6

Circuit 17—Lincolnshire
HIS HON. JUDGE LANGMAN
Barton-on-Humber, 14 (R.), 21
††*Boston, 6 (R.), 13, 20 (R.B.)
Brigg, 17
Caistor,
Gainsborough, 21 (R.), 24
Grantham, 14
††Great Grimsby, 4, 5 (J.S.), 6 (R.B.), 8, 19 (J.S.), 20
(*R. every Wednesday*)
Holbeach, 27
Horncastle, 14 (R.)
*Lincoln, 6 (R.) (R.B.), 10
*Louth, 18
Market Rasen, 28
Scunthorpe, 11 (R.), 25
Skegness, 7 (R.)
Sleaford, 11
Spalding, 26
Spilsby, 12

Circuit 18—Nottinghamshire
HIS HON. JUDGE TUCKER
Doncaster, 5, 6, 7, 26
East Retford, 25
Mansfield, 10, 11
Newark, 7 (R.), 17
*Nottingham, 12, 13 (J.S.), 14, 19, 20, 21 (J.S.), (B.)
Worksop, 11 (R.), 18

Circuit 19-Derbyshire
HIS HON. JUDGE WILLES
Alfreton, 11
Ashbourne, 4
Bakewell,
Burton-on-Trent, 12 (R.B.)
Buxton,
*Chesterfield, 7, 14
*Derby, 5, 18 (R.B.), 19, 20 (J.S.)
Ilkeston, 18
Long Eaton,
Matlock, 17
New Mills, 10
Wirksworth,

Circuit 20—Leicestershire
HIS HON. JUDGE GALBRAITH, K.C.
Ashby-de-la-Zouch, 20
*Bedford, 18 (R.B.), 26
Bourne,
Hinckley, 19
Kettering, 25
*Leicester, 10, 11, 12 (J.S.), (B.), 13 (B.), 14 (B.)
Loughborough, 18
Market Harborough, 17
Melton Mowbray, 28
Oakham, 21
Stamford, 24
Wellingborough, 27

Circuit 21—Warwickshire
HIS HON. JUDGE DALE
HIS HON. JUDGE FINNEMORE (Add.)
*Birmingham, 3, 4, 5, 6, 7, 10, 11 (B.), 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

Circuit 22—Herefordshire
HIS HON. JUDGE ROOPE REEVE, K.C.
Bromsgrove, 14
Bromyard, 12
Evesham, 19
Great Malvern, 3
Hay,
*Hereford, 11, 25
*Kidderminster, 4, 18
Kington,
Ledbury, 5
*Leominster, 10
Ross,
††Stourbridge, 6, 7
Tenbury, 20
*Worcester, 13, 21

Circuit 23 — Northamptonshire
HIS HON. JUDGE FORBES
Atherston, 20
Banbury, 21
Bletchley, 18
Chipping Norton, 26
*Coventry, 10 (B.), 11, 24
Daventry, 12
Leighton Buzzard, 13
*Northampton, 3, 4, 18 (R.), 21 (R.B.)
Nuneaton, 5
Rugby, 6, 20 (R.)
Shipston-on-Stour, 17
Stow-on-the-Wold, 19
Stratford-on-Avon, 27
Warwick, 14 (R.B.)

Circuit 24 — Monmouthshire
HIS HON. JUDGE THOMAS
Abergavenny,
Abertillery, 11
Bargoed, 12
Barry, 6
††Cardiff, 3, 4, 5, 7, 8
Chepstow,
Monmouth, 18
††Newport, 20, 21
Pontypool and Blaenavon, 19, 28
*Tredegar, 13

Circuit 25—Staffordshire
HIS HON. JUDGE CAPORN
*Dudley, 11, 18 (J.S.), 25
*Walsall, 6, 13 (J.S.), 20, 27 (J.S.)
*West Bromwich, 5 (J.S.), 12, 19 (J.S.), 26
*Wolverhampton, 7, 14 (J.S.), 21, 28 (J.S.)

Circuit 26—Staffordshire
HIS HON. JUDGE FINNEMORE
Alcester,
Burslem,
*Hanley, 13, 27
Leek, 10
Lichfield, 19
Newcastle - under - Lyme, 11
Redditch, 21
*Stafford, 14
*Stoke-on-Trent, 12
Stone, 31
Tamworth, 20
Uttoxeter, 28

Circuit 28-Shropshire
HIS HON. JUDGE SAMUEL, K.C.
Brecon,
Bridgnorth,
Builth Wells,
Craven Arms,
Knighton,
Llandrindod Wells,
Llanfyllin, 21
Llanidloes, 12
Ludlow, 17
Machynlleth, 14
Madeley, 20
Newtown, 13
Oswestry, 18
Presteign,
*Shrewsbury, 24, 27
Wellington, 25
Welshpool, 19
Whitchurch, 26

Circuit 29—Caernarvonshire
HIS HON. JUDGE EVANS, K.C.
Bala, 4
††Bangor, 10
Blaenau Festiniog,
*Caernarvon, 12
Colwyn Bay, 20
Conway,
Corwen, 4
Denbigh, 18
Dolgelly, 3
Flint, 5 (R.)
Holyhead,
Holywell, 17
Llandudno,
Llangefni, 11
Llanrwst, 21
Menai Bridge,
Mold, 25
*Portmadoc,
Pwllheli, 14 (R.)
Rhyl, 19
*Ruthin,
Wrexham, 26, 27

Circuit 30—Glamorganshire
HIS HON. JUDGE WILLIAMS, K.C.
*Aberdare, 4
Bridgend, 24 (R.), 25, 26, 27, 28, 29
Caerphilly, 20 (R.)
Merthyr Tydfil, 6, 7
*Mountain Ash, 5
Neath, 18, 19, 20
*Pontypridd, 11, 12, 13, 14
Port Talbot, 21
*Porth, 10
*Ystradyfodwg,

Circuit 31—Carmarthenshire
HIS HON. JUDGE MORRIS, K.C.
Aberayron,
††Aberystwyth, 21
Cardigan, 3
††Carmarthen and Ammanford, 4, 5
††Haverfordwest, 19
Lampeter,
Llandovery,
Llanelly, 25, 27
Narberth, 17
Newcastle-in-Emlyn,
Pembroke Dock,
*Swansea, 11, 12, 13, 14

Circuit 32—Norfolk
HIS HON. JUDGE PUGH
Beccles, 10
Diss, 4
Downham Market,
East Dereham, 5
Fakenham, 11
††Great Yarmouth, 20, 21
Harleston, 24
Holt, 6
††King's Lynn, 13, 14
*Lowestoft,
North Walsham, 12
*Norwich, 17, 18, 19
Swaffham,
Thetford,
Wymondham,

Circuit 33—Essex
HIS HON. JUDGE HILDESLEY, K.C.
Braintree,
*Bury St. Edmunds 25
*Chelmsford, 3, 31
Clacton, 18
Colchester, 5, 6
Felixstowe,
Halesworth,
Halstead,
Harwich,
††Ipswich, 19, 20, 21
Maldon, 13
Saxmundham, 4
Stowmarket, 28
Sudbury, 26
Woodbridge, 12

Circuit 34-Middlesex
HIS HON. JUDGE TUDOR REES
Uxbridge, 4, 18, 25

Circuit 35 — Cambridgeshire
HIS HON. JUDGE CAMPBELL
Biggleswade,
Bishops Stortford,
*Cambridge,
Ely,
Hitchin,
*Huntingdon,
Luton,
March
Newmarket,
*Oundle,
Peterborough,
Royston,
Saffron Walden,
Thrapston,
Wisbech,
(*List not received.*)

Circuit 36—Berkshire
HIS HON. JUDGE HURST
*Aylesbury, 7, 21 (R.B.)
Buckingham, 25
Cheltenham, 11, 18
Henley-on-Thames,
High Wycombe, 20
Northleach, 17
Oxford, 10, 17 (R.B.), 24
Reading, 6 (R.B.), 12, 13, 14
Tewkesbury,
Thame,
Wallingford, 3
Wantage, 4
Witney, 26

Circuit 37-Middlesex
HIS HON. JUDGE SIR GERALD HARGREAVES
Chesham, 4
*St. Albans, 11
West London, 3, 4, 10, 11, 12, 17, 18, 19, 24, 25, 26, 31

Circuit 38-Middlesex
HIS HON. JUDGE ALCHIN
Barnet, 4, 18, 25
*Edmonton, 6, 7, 11, 13, 14, 20, 21, 27, 28
Hertford, 5
Watford, 12, 19, 26

Circuit 39-Middlesex
HIS HON. JUDGE ENGELBACH
HIS HON. JUDGE TUDOR REES (Add.)
Shoreditch, (*List not received.*)
Windsor, 5, 12, 19, 26

Circuit 40—Middlesex
HIS HON. JUDGE JARDINE, K.C.
HIS HON. JUDGE DRUCQUER (Add.)
HIS HON. JUDGE TUDOR REES (Add.)
Bow, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

Circuit 41-Middlesex
HIS HON. JUDGE EARENGEY, K.C.
HIS HON. JUDGE TREVOR HUNTER K.C. (Add.)
Clerkenwell, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

Circuit 42-Middlesex
HIS HON. JUDGE LILLEY
HIS HON. JUDGE DAVID DAVIES, K.C.
Bloomsbury, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

Circuit 44-Middlesex
HIS HON. JUDGE AUSTIN JONES
HIS HON. JUDGE DAVIES, K.C. (Add.)
Westminster, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

Circuit 45—Surrey
HIS HON. JUDGE HANCOCK, M.C.
HIS HON. JUDGE HURST (Add.)
*Kingston, 4, 7, 11, 14, 18, 21, 25, 28
*Wandsworth, 3, 5, 6, 10, 12, 13, 17, 19, 20, 24, 26, 27, 31

Circuit 46-Middlesex
HIS HON. JUDGE DRUCQUER
Brentford, 3, 6, 10, 13, 17, 20, 24, 27, 31
*Willesden, 4, 5, 7, 11, 12, 14, 18, 19, 21, 25, 26, 28

Circuit 47—Kent
HIS HON. JUDGE WELLS
HIS HON. JUDGE HURST (Add.)
Woolwich, 12, 26

Circuit 48—Surrey
HIS HON. JUDGE KONSTAM, C.B.E., K.C.
HIS HON. JUDGE BENSLEY WELLS (Add.)
Dorking, 20
Epsom, 5, 12, 19
*Guildford, 13, 27
Horsham, 11
Lambeth, 3, 4, 5, 6, 7, 10, 13, 14, 17, 18, 21, 24, 25, 27, 28
Redhill, 26

Circuit 49—Kent
HIS HON. JUDGE CLEMENTS
Ashford, 3, 31
*Canterbury, 11
Cranbrook,
Deal,
*Dover, 19
Faversham,
Folkestone,
Hythe,
*Maidstone, 7
Margate,
*Ramsgate, 5
††Rochester, 12, 13
Sheerness,
Sittingbourne, 18
Tenterden, 17

Circuit 50—Sussex
HIS HON. JUDGE AUSTIN JONES
HIS HON. JUDGE ARCHER, K.C. (Add.)
Arundel, 7
Brighton, 6, 13, 14, 27, 28
††Chichester, 21
*Eastbourne, 19
*Hastings, 4
Haywards Heath,
*Lewes, 31
Petworth, 10
Worthing, 25

Circuit 51 — Hampshire
HIS HON. JUDGE TOPHAM, K.C.
Aldershot,
Basingstoke, 12
Bishops Waltham,
Farnham, 7
*Newport,
Petersfield, 14
††Portsmouth, 3 (B.), 6, 13
Romsey,
Ryde, 26
††Southampton, 4, 11, 12 (B.)
*Winchester, 5

Circuit 52—Wiltshire
HIS HON. JUDGE JENKINS, K.C.
*Bath, 6 (B.), 13 (B.)
Calne, 8
Chippenham, 28
Cirencester, 27
Devizes, 25
Dursley, 20
*Frome, 21 (B.)
Hungerford, 18
Malmesbury, 13 (R.)
Marlborough, 18
Melksham,
*Newbury, 12 (B.)
Stroud, 29
*Swindon, 19, 26 (B.)
Trowbridge, 7
Warminster, 15
Wincanton, 14

Circuit 54-Somersetshire
HIS HON. JUDGE WETHERED
††Bridgwater, 7
††Bristol, 10 (J.S.), 11, 12, 13, 14 (B.), 18 (R.), 19, 20, 21 (B.), 24 (J.S.)
Gloucester, 25
Minehead, 18
Newent,
Newnham,
Thornbury, 31
*Wells, 4
Weston-super-Mare, 5

Circuit 55 — Dorsetshire
HIS HON. JUDGE CAVE, K.C.
Andover,
Blandford,
*Bournemouth,
Bridport,
Crewkerne,
*Dorchester,
Lymington,
*Poole,
Ringwood,
*Salisbury,
Shaftesbury,
Swanage,
*Weymouth,
Wimborne,
*Yeovil,
(*List not received.*)

Circuit 56—Kent
HIS HON. JUDGE SIR GERALD HURST, K.C.
Bromley, 4, 5, 19
*Croydon, 10, 11, 12, 24, 25, 26
Dartford, 13, 27
East Grinstead, 18
Gravesend, 17
Sevenoaks, 3
Tonbridge, 6
Tunbridge Wells, 20

Circuit 57-Devonshire
HIS HON. JUDGE THESIGER
Axminster, 17
††*Barnstaple, 25
Bideford, 26
Chard, 18
†Exeter, 13, 14
Honiton,
Langport, 17 (R.)
Newton Abbot, 20
Okehampton,
South Molton, 27
Taunton, 10
Tiverton, 19
*Torquay, 11, 12
Torrington,
Totnes, 21
Werington, 24

Circuit 58—Essex
HIS HON. JUDGE TREVOR HUNTER, K.C
Brentwood, 21 (R.)
Gray's Thurrock, 11 (R.)
Ilford, 3 (R.), 4, 10 (R.), 17 (R.), 18, 24, (R.), 25, 31 (R.)
Southend, 5 (R.), 12, 13 (R.), 14, 19 (R.B.), 26

Circuit 59—Cornwall
HIS HON. JUDGE ARMSTRONG
Bodmin,
Camelford,
Falmouth, 25
Helston,
Holsworthy,
Kingsbridge, 14
Launceston,
Liskeard 6 (R.)
Newquay, 11
††Penzance, 12
Plymouth, 12 (R.), 18, 19, 20, 21
Redruth, 6
St. Austell, 17 (R.)
Tavistock, 13
††Truro, 7

The Mayor's & City of London Court
HIS HON. JUDGE DODSON
HIS HON. JUDGE BEAZLEY
HIS HON. JUDGE THOMAS
HIS HON. JUDGE MCCLURE
Guildhall, 3, 4, 5 (A.), 6, 7 (J.S.), 10, 11, 12 (A.), 13, 14 (J.S.), 17, 18, 19, 20, 21 (J.S.), 24, 25, 26, 27, 28 (J.S.), 31

* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

To-day and Yesterday.

LEGAL CALENDAR.

June 19.—Job Cox was a postman who stole a £10 note from a letter, was convicted at the Old Bailey and condemned to death. When the Recorder of London, Mr. Norman Knollys, made his regular report to the Privy Council at the end of the Sessions, his case was considered along with the rest. Cox had high hopes of a reprieve, but at half-past six on Wednesday evening, the 19th June, 1833, the Recorder's warrant for his execution arrived at Newgate. The prisoner was informed, to his deep dismay, and the intelligence was sent to the Press.

June 20.—Next morning, the 20th June, Lord Chief Justice Denman saw in his newspaper an announcement that Cox was to be hanged on the following Tuesday. This astonished him, for he had been present at the Privy Council meeting when the case had been dealt with, and it had been determined to commute the sentence to transportation for life. He immediately mentioned the matter to the under-sheriff, urging him to communicate with the office of the Secretary of State and have the error corrected. The upshot was that the warrant was countermanded and the man's life saved. The authorities of the City of London were so shocked at this display of incompetence on the part of their Recorder that they passed a resolution that he ought to retire. He did so accordingly, and after nearly fifty years as a judge he could not claim to be still at the height of his powers.

June 21.—William Marchant was under-footman at No. 21, Cadogan Place, Chelsea, and Elizabeth Paynton was under-housemaid. One day in May, 1839, the family left town in the carriage for Foot's Cray. The cook and the upper-housemaid went out, but on their return no one opened the door. When the coachman and upper-footman brought the carriage home an entry was forced and Elizabeth Paynton was found dead on the drawing room floor, her throat cut with a razor. Marchant had vanished, but two days later he gave himself up to a police constable at Hounslow. Terrified at what he had done, as he walked into town he often looked back declaring he heard the girl behind him. On the 21st June, 1839, he pleaded guilty to murder at the Old Bailey. He was duly executed.

June 22.—In November, 1808, the Peninsular War was bringing British ships to Portuguese waters. In that month *The Friends*, an armed transport, was lying in the Tagus, anchored about a mile from Lisbon, when her master, Captain John Sutherland stabbed his cabin boy, William Richardson, in a fit of fury. On the 22nd June, 1809, he was tried for murder at the Admiralty Sessions at the Old Bailey before Sir William Scott and Mr. Justice Grose. He was convicted and condemned to be hanged at Execution Dock, his body being afterwards given to the surgeons for dissection. He was much agitated and had to be supported by the warders.

June 23.—On the 23rd June, 1841, Edward Moxon, the publisher, was tried for blasphemy in the Court of Queen's Bench, Lord Chief Justice Denman presiding. The prosecution, which was instituted by another publisher, arose out of his edition of the complete works of Shelley, and the case against him rested chiefly on certain passages from "Queen Mab." Moxon was defended by his friend, Serjeant Talfourd, afterwards a judge, himself a literary man. He delivered a speech of great power and beauty which his client afterwards published. Lord Denman summed up largely in favour of the defendant, but the jury, after a quarter of an hour's deliberation, found him guilty. He was merely ordered to come up for judgment when called on and no punishment was inflicted on him.

June 24.—William Shee was born at Finchley on the 24th June, 1804, the son of an Irish father and an English mother. He attended first a school in Somers Town kept by a French priest and then St. Cuthbert's College, Ushaw, where his cousin, the future Cardinal Wiseman, was a student. Afterwards he attended lectures at Edinburgh University, entered Lincoln's Inn, and was called to the Bar in 1828. He gradually acquired an extensive practice, made his mark at the Maidstone Sessions, and obtained a considerable lead on the Home Circuit. He became a Serjeant in 1840, received a patent of precedence in 1845, and was appointed Queen's Serjeant in 1857. Five years earlier he had entered the House of Commons as a Liberal, representing Kilkenny, his father's county. Of noble aspect and commanding figure, he was an impressive speaker in the grand oratorical manner, described by a contemporary as "of the old Roman type," and on more than one occasion his speeches were greeted by applause in court. He was a conscientious and earnest advocate and his common sense and genial kindness made him extremely popular. In 1863 he was appointed a Justice of the Queen's Bench, the first Roman Catholic to be made an English judge for more than a century and a half.

June 25.—On the 25th June, 1827, at the morning sitting of the Court of Common Pleas, seven gentlemen advanced severally to the front of the Bar, and, having gone through the usual formalities, took their seats as Serjeants-at-law. Of the group the two most eminent were William Oldnall Russell, who in 1832 was appointed Chief Justice of Bengal and knighted, and Henry Alworth Merewether, who in 1842 was elected Town Clerk of London, relinquishing an income of over £5,000 a year at the Bar.

TOLLING FOR CHIEF JUSTICE MARSHALL.

From Philadelphia it is reported that the invasion of France was announced there by the ringing of the Liberty Bell, which first summoned the people to hear the Declaration of Independence in 1776. It was cracked in 1835, when it tolled for the death of Chief Justice Marshall, and for ninety-nine years thereafter it was silent. Marshall's fame is all too little appreciated in England, but what Lord Mansfield was here, he became to the legal tradition of the United States, where the memory of his character still shines by its "native, innate strength and original independent greatness." In all the thirty-five years that the magnificently presided over the Supreme Court, perhaps his greatest ordeal, from which he emerged triumphantly, was when in 1807 he conducted the trial of Aaron Burr at Richmond in Virginia. The turbulent and mischievous politician was accused of treason on wholly inadequate evidence, but such was the feeling against him that an unprejudiced jury could not be found. The mob was bent on his conviction no less than the President of the United States, but with calm dignity, absolute courage, complete mastery of nerves and temper, Marshall exerted all the force of his personality to uphold the pure administration of justice. Burr was acquitted and the populace burnt judge and accused in effigy, but the law had been saved from the degradation of mass dictation. When the Chief Justice died in Philadelphia many years later they brought his body to Richmond for burial. The bells tolled all day; the guns fired; the civil authorities, the clergy and the military came out to bring him home to his own house and to his burial.

Our County Court Letter.

Tenancy of Resident Manager.

IN *John G. Murdock & Co., Ltd.* v. *Moseley*, at Walsall County Court, the claim was for possession of two living rooms on the ground floor and three on the first floor of premises at No. 113, Lichfield Street, Walsall. These constituted the living accommodation attached to a piano showroom. The plaintiffs became annual tenants of the whole premises in 1933, and had given their landlord notice terminating their tenancy at Lady Day, 1944. In order that vacant possession could be given to the landlord, it was necessary for the defendant (who was the plaintiffs' resident manager) to vacate the house. The plaintiffs' case was that the house was let to the defendant at a nominal rent (10s. a week) as part of his remuneration, and it was a condition of his employment that he should reside on the premises. This was on account of the valuable stock of pianos kept there in peace time. The defendant's case was that the rent of the house was an economic rent, and it was not a condition of his employment that he should reside on the premises. The plaintiffs' printed form of managers' service agreement (which the defendant had signed) was silent on the point of residence. The defendant originally went into possession of the house sixteen years ago. The rent was then 5s. a week, and the fact that it was afterwards increased was evidence of a tenancy. Admittedly there was no rent book and the rent was paid by deduction from the defendant's commission. Nevertheless, the defendant was not in the position of a caretaker under a service occupancy, as alleged by the plaintiffs. He was a tenant, protected by the Rent Acts. The plaintiffs were not prohibited from sub-letting, and would be under no liability to the landlord if the defendant held over. His Honour Judge Caporn observed that the only witness for the plaintiffs was unable to give evidence of the position prior to 1941. In that year the defendant had entered into a new service agreement, and the weekly payment for the house was increased to 10s. In order to avoid giving a decision under which any matter might become *res judicata*, a non-suit was entered, with costs to the defendant.

Decision under the Workmen's Compensation Acts.

Accident on way to Work.

IN *Burt* v. *Hogg & Keay* at Banbury County Court an award was claimed on the ground of total incapacity. The applicant was a quantity surveyors' assistant, who had been employed by the respondents on a site at Aynho. On the 25th October, 1943, the applicant had been riding to work on a motor cycle, when he had an accident in which both his legs were broken. As the applicant had a travelling allowance, the implication was that his employment was not restricted to his work on sites. He was employed while travelling to work, and the accident arose in the course of his employment. His periods of travelling from Banbury were included in the amounts claimed for overtime. The respondents' case was that they were not aware of the latter circumstance. The accident had not arisen in the course of employment, as the applicant's work did not begin until he arrived on the site. His Honour Judge Forbes upheld the latter contention. Judgment was given for the respondents, with costs on Scale C.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Settled Land — Legacies charged thereon — Intestate Reversioner—Widow's Life Interest—Assent.

Q. A died in 1892, having by will given certain realty to trustees upon trust to let and manage it and pay off mortgages and then to pay the net rents to C for life, who died in 1937. A then devised the reversion to the realty in fee simple (but charged with two legacies in favour of X and Y) to D who died intestate in 1934, leaving a widow and five children (all of age) surviving. There was no trust for or power of sale of realty in A's will. The personal representatives of D have recently paid off the two legacies to X and Y charged by A on the realty, and have taken up the deeds from E and F, the present trustees of A's will. The question of the form of the assent to perfect D's title now arises, in view of his intestacy and his widow's resulting life interest in his estate, combined with the fact that on 1st January, 1926, the realty was presumably "settled land" with C the tenant for life the estate owner.

(1) Who should give the assent, and in what capacity?

(2) And to whom should it be given?

A. The legal estate was vested in C at the date of C's death (S.L.A., 1925, s. 20 (1) (viii), and s. 20 (2), and L.P.A., 1925, Sched. I, Pt. II, paras. 3 and 6 (*c*)). In view of the charge of the legacies (S.L.A., 1925, s. 1 (v)), the settlement persisted after the death of C.

(1) A settled land grant in the estate of C is needed and the grantees will be the persons to assent.

(2) We suggest that the assent should be made to the personal representatives of D and upon trust for sale (see Ad. of E.A., 1925, s. 33 (1)). As to the position of a subsequent purchaser from these personal representatives, see S.L.A., 1925, s. 110 (5).

Testamentary Expenses—Costs of running the Testator's Establishment for a Period after his Death.

Q. Part of the very considerable estate of a testator is a large house and gardens. There are four domestic servants and four outdoor servants. The house contains furniture, silver and pictures of great value. While the preparation of inventories and the valuations are in progress the executors are continuing to employ all the servants and to provide the housekeeping expenses. Furthermore, one of the beneficiaries, whose interest is a share of income of residue, is continuing to live in the house, and accommodation has to be found for valuers, visiting executors and their solicitors and beneficiaries, the house being in remote country 10 miles from the nearest station. Probate is not likely to be obtained for two or three months. Are the wages and household expenses during administration, and until the executors assent to the specific devise of the house, to be borne wholly out of capital or partly out of capital and partly out of income? In the second alternative, how should the expenses be apportioned?

A. An executor's testamentary expenses include the expenses of "executing" the will and "executing" includes getting in and looking after the assets (*Sharp* v. *Lush* (1879), 10 C.D. 468). It is a recognised principle that an executor is justified in keeping the testator's establishment going for such a reasonable period as may be necessary under the circumstances. In this case the circumstances are peculiar to some extent and would no doubt justify more than the normal expenditure. At the same time we feel that four indoor and four outdoor servants seems a large staff (especially in war time). We think it would be prudent for the executors to cut down expenses as soon and as far as possible, and to make an amicable agreement (if possible) as to how the costs of running the establishment should be borne.

War Legislation.

Statutory Rules and Orders, 1944.

E.P. 654. **Food Standards Order,** June 1, amending the Food Standards (General Provisions) Order.

No. 662/L. 28. **Oath and Affidavit.** The Commissioners for Oaths (Fees) Order. June 6. [See *ante*, p. 216].

E.P. 659. **Railway Wagons.** The Requisitioning of New Privately owned Railway Wagons Notice. June 5.

No. 661. **Road Traffic and Vehicles.** Motor Vehicles (Authorisation of Special Types) Order, June 6.

Stationery Office.

List of Statutory Rules and Orders, May, 1944.

Wills and Bequests.

Mr. Arthur Peel Williamson, solicitor, of Retford, Notts, left £70,155, with net personalty £42,121.

Mr. Edward Musgrave, solicitor, of Cockermouth, left £19,062, with net personalty £18,905.

Parliamentary News.

HOUSE OF LORDS.

Loughborough Corporation Bill [H.L.].
Reported with Amendments. [14th June.

Ministry of Health Provisional Order Confirmation (Workington) Bill [H.L.].
Read Second Time. [14th June.

Rural Water Supplies and Sewerage Bill [H.C.].
Read First Time. [13th June.

HOUSE OF COMMONS.

Anglesey County Council (Water, etc.) Bill [H.C.].

Chesterfield and Bolsover Water Bill [H.C.].

Ministry of Health Provisional Order (North Lindsey Water Board) Bill [H.C.].

Ministry of Health Provisional Order (Warrington) Bill [H.C.].
Read Third Time. [16th June.

Finance Bill [H.C.].
In Committee. [15th June.

Food and Drugs (Milk and Dairies) Bill [H.C.].
In Committee. [13th June.

Gillingham Corporation Bill [H.L.].
Read Second Time. [13th June.

London County Council (Money) Bill [H.C.].
Read Third Time. [15th June.

Parliamentary Electors (War-time Registration) Bill [H.C.].
Read First Time. [15th June.

QUESTIONS TO MINISTERS.

War Damage Commission: Value Payments.

Mr. Bossom asked the Chancellor of the Exchequer when he will be able to state the basis upon which the owners of large commercial properties or industrial premises which have been bomb-damaged can ascertain the amount of Government compensation or contribution that they will be receiving on account of war damage to their former buildings, in order that they may go ahead and make the necessary arrangements for their post-war building.

Sir John Anderson: In nearly all cases of extensive war damage the War Damage Commission has already advised owners of the basis of compensation applicable to their case, namely, whether a cost of works payment or a value payment is likely to be appropriate. Where a cost of works payment is appropriate, the amount of this payment cannot, in cases of severe damage which it is not yet possible to repair, be assessed, since it is based upon the reasonable cost of making good the war damage at the time when the damage is made good. Where, however, the appropriate payment is a value payment, the amount of the payment is ascertainable, and I am informed that the Commission hope to begin the issue of their preliminary decisions to the various owners concerned in a few months' time and that the great majority of such decisions will be issued before the end of 1944.

Mr. W. J. Brown asked the Chancellor of the Exchequer whether, in order to avoid penalising persons whose homes have been destroyed by enemy action and who find it necessary to make some arrangements involving withdrawal of part of the compensation due to them from the War Damage Commission, he will now agree to pay the accrued interest on the moneys so drawn.

Sir John Anderson: The provisions of Section 22 (2) of the War Damage Act, 1943, do not empower the War Damage Commission to pay as an advance any sum in respect of interest accrued on a value payment. It is, however, the practice of the Commission, in deciding what amount can be paid, without prejudice to the rights of any other person concerned, by way of an advance on account of a value payment, to take account of any accrued interest as a set off against deductions due to be made from the payment in respect of war damage contributions not yet paid. [8th June.

Obituary.

Mr. W. H. Stoker.

Mr. William Henry Stoker, barrister-at-law, died on Friday, 16th June. He was called by the Middle Temple in 1895, and in 1898 was appointed Attorney-General of the Leeward Islands. He held a similar post in Barbados in 1902, where he took silk. In 1907 he was appointed a Judge of the Supreme Court of Nigeria. In 1916, he was appointed Arbitrator and Chairman of the Ministry of Labour in industrial disputes, and served with great success in labour arbitrations.

Mr. R. T. G. Tangye.

Mr. Richard Trevithick Gilbertstone Tangye, barrister-at-law, died on Monday, 12th June. He was called by the Inner Temple in 1899. In 1930 he was appointed joint Chairman of the Cornwall Quarter Sessions, of which he became Chairman in 1941.

Mr. C. J. Alldis.

Mr. Charles John Alldis, solicitor, of Hove, Sussex, died recently, aged eighty-three. He was admitted in 1886.

Mr. R. C. Z. D. Brockman.

Mr. Randolph Charles Zouch Drake Brockman, solicitor, of Messrs. A. D. & L. J. D. Brockman, solicitors, of Folkestone, Kent, died on Monday, 12th June, aged sixty. He was admitted in 1910.

Notes of Cases.

COURT OF APPEAL.

Inland Revenue Commissioners *v.* **L. B. Holdings, Ltd.**

Scott, Luxmoore and du Parcq, L.JJ.

1st, 2nd, 3rd December, 1943; 1st February, 1944.

Revenue—Sur-tax—Apportionment of income of company wholly to one member who virtually held all the shares—Declaration of trust by member of whole income of company for benefit of his wife and children—Breach of trust by member as sole trustee by retaining part of income of trust for himself—Whether member able to secure income of company for his benefit within statutory meaning—Whether apportionment rightly made—Finance Act, 1922 (12 & 13 *Geo.* 5, *c.* 17), *s.* 21, *Sched. I, para.* 8—*Finance Act,* 1936 (25 *Geo.* 5 & 1 *Edw.* 8, *c.* 34), *s.* 20—*Finance Act,* 1937 (1 *Edw.* 8 *and* 1 *Geo.* 6, *c.* 54), *s.* 14—*Finance Act,* 1939 (2 & 3 *Geo.* 6, *c.* 41), *ss.* 14, 15, *subs.* (2).

Appeal from the judgment of Wrottesley, J.

This was an appeal by the company, which was an investment company within the meaning of the Finance Act, 1936, s. 20, and therefore came within the provisions of the Finance Act, 1939, ss. 14, 15. On 22nd March, 1934, B made a declaration of trust of property, which ultimately consisted of the shares of the company, of which he was the governing director, virtually the sole shareholder (as he held all the shares except one, which was held by his wife as his nominee), and by means of his voting power in sole control thereof. By the terms of the trust his wife was to have £2,000 of the annual income and his five children, two of whom were infants, were to have the remainder of the income in equal shares. Subsequently B as sole trustee committed a breach of trust by using some of the income for his own purposes. On 31st March, 1940, and after the commission of the breach of trust, the three adult children by deed released B from all liability for breaches of trust, but they did not know that the particular breach of trust had been committed. On 1st December, 1939, the Special Commissioners, in pursuance of Finance Act, 1939, s. 15, consequent upon directions made pursuant to Finance Act, 1922, s. 21, Finance Act, 1937, s. 14 (2), and Finance Act, 1939, s. 14, made apportionments to B of the whole of the actual income of the company for the years of assessment, namely, 1938–1939 and part of 1939–1940 (as the company went into liquidation on 22nd July, 1940). The Crown contended that the apportionments had been properly made because (1) the declaration of trust was never intended to bind B and was a sham; (2) B was, or was likely to be, able to secure that the income of the company would be applied either directly or indirectly for his benefit within the meaning of s. 15 (2) of the 1939 Act, not only in the events which had happened by reason of the breach of trust, but also by reason of his commanding position in the company. Section 15 (2) of the 1939 Act provides as follows: "In apportioning for the purposes of" [Finance Act, 1922] "s. 21, the income of an investment company . . . (*c*) to any person who is a member of the company, and in their opinion is, or is likely to be, able to secure that income or assets, whether present or future, of the company will be applied either directly or indirectly for his benefit to a greater extent than is represented in the value for apportionment purposes of his relevant interest in the company, considered in relation to the value for those purposes of the relevant interests of other persons therein; the Special Commissioners may apportion to him such part of the income of the company as appears to them to be appropriate and may adjust the apportionment of the remainder of the company's income as they may consider necessary." Subsection (3) provides as follows: "For the purposes of this section, a person shall be deemed to be able to secure that income or assets will be applied for his benefit if he is in fact able so to do by any means whatsoever, whether he has any rights at law or in equity in that behalf or not . . ." The Special Commissioners, who heard the first appeal, and the Board of Referees, who heard the appeal from the Special Commissioners, held that B did not intend to deprive the beneficiaries permanently of the trust income, and that his financial position was such that he was able to make good any deficiency in the trust income, therefore the declaration of trust was not a sham; and they furthermore held that the words "able to secure" in s. 15 (2) meant "able to secure by lawful means only," and as it was uncertain that not only the infant children but also the adult children would have consented to the particular breach of trust, if they had known of it, therefore the means used by B to secure the income for his benefit were unlawful, and the section did not apply to the case. They therefore discharged the apportionments. Wrottesley, J., held that the Board were wrong in their interpretation of s. 15 (2) of the 1939 Act, but the subsection applied to any non-criminal means of applying the income for the particular member's benefit, even temporarily, whether such means were lawful or unlawful. The apportionments were therefore correctly made, even though the means used were unlawful.

Scott, L.J., and du Parcq, L.J., in a joint judgment, said that Wrottesley, J., had stated the law too favourably to the Crown, for, first of all, a temporary securing of benefit did not come within the mischief of the subsection. Secondly, no one could secure the application of property for his benefit within the meaning of the subsection if he possessed himself of it wrongfully, unless it was reasonably certain that the beneficiaries would condone such wrongdoing, but as it did not appear whether the beneficiaries, including the infant ones, would have been reasonably certain to have condoned the breach of trust, if they had known of it, the case must go back to the Board for them to find as a fact whether or not the beneficiaries would have been so reasonably certain.

Luxmoore, L.J., in a dissenting judgment, said that the judgment of Wrottesley, J., was correct. The words in subs. (3) "by any means whatsoever" were of much wider import than legal or equitable means, and therefore included any unlawful means, which were not criminal. Moreover, the phrase "likely to be able to secure," occurring in subs. (2), indicated means which went beyond legal or equitable means. He would therefore have dismissed the appeal.

Case sent back to Board of Referees to find further facts.

Counsel: *J. Millard Tucker,* K.C., and *N. E. Mustoe; The Attorney-General* (The Rt. Hon. Sir Donald Somervell, K.C., M.P.), *J. H. Stamp* and *R. P. Hills.*

Solicitors: *Wetherfield, Baines & Baines; Solicitor of Inland Revenue.*

[Reported by J. H. G. Buller, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re **Picton; Porter** *v.* **Jones.**

Cohen, J. 2nd May, 1944.

Will—Construction—Bequests—Residue given to legatees pro rata—Codicil varies amounts of legacies—Division of residue.

Adjourned summons.

The testator by his will dated 23rd May, 1941, bequeathed a number of pecuniary legacies and a specific legacy, and then provided: "All the rest residue and remainder of my real and personal estate of whatsoever nature or kind the same may be I give unto and between the above mentioned legatees including my trustees pro rata according to the legacies left to them by me in this my will." By a codicil the testator revoked seven of the legacies, to five of the legatees "in lieu" of their original legacies he gave legacies of different amounts; to two of the legatees he gave no substituted legacies; and he bequeathed three pecuniary legacies to persons who had taken nothing under the will. He expressly confirmed his will. He died on 27th June, 1943. This summons was taken out by his executors to have the effect of the codicil on the gift of residue decided.

Cohen, J., said that, if the matter were free from authority, he would feel no doubt that the intention of the testator, as expressed in his will and codicil, was to substitute for all purposes the legacies given by the codicil for those thereby revoked. His view was supported by the reasoning in *In re Courtauld,* 47 L.T. 647. In his opinion, the expression "in lieu thereof" in the codicil in the present case was identical, in effect, with words "in substitution for" in that case. The legatees named in the codicil were entitled to participate in the distribution of the residuary estate according to the amount of their substituted legacies. Those legatees whose legacies were revoked and to whom no substituted legacies were given relied on the decision in *In re Florence,* 117 L.T. 701. That case was difficult to reconcile with *In re Courtauld, supra,* but there was this salient difference, in *In re Florence, supra,* there was not, as there was in *In re Courtauld, supra,* a substitution of other legacies for the revoked legacies. In his judgment, where there was such a substitution, it would *prima facie* mean a substitution for all the purposes of the will, including the right to participate in the division of residue, where residue was directed to be divided in proportion to the legacies left to the pecuniary legatees by the will. In his view, these legatees were not entitled to participate in the division of residue. Finally, he turned to the position of the three legatees who took legacies under the codicil only. He had come to the conclusion that the intention of the testator as expressed in his will was that these legatees should take the place of the legatees whose legacies were revoked for all purposes. The conclusion which he had reached could be supported on another ground. His attention had been called to a series of authorities dealing with the effect of the confirmation of a will by a codicil. Applying the principle laid down in *In re Smith* [1916] 1 Ch. 523, and in *In re Tredgold* [1943] Ch. 69, he was justified in the conclusion that the residuary estate of the testator was divisible amongst the legatees named in the will and codicil other than those legatees whose legacies were revoked.

Counsel: *Vanneck; G. D. Johnston; H. H. King; Skone James; Geoffrey Cross; Belsham; Stranders* (for *Danckwerts*); *Michael Bowles; Richmount.*

Solicitors: *Farrar, Porter & Co.; Burton, Yeates & Co.,* for *J. F. Morris, Son & Lloyd,* Carmarthen; *T. D. Jones & Co.,* for *Nicholas & Evans,* Cardiff; *Helder, Roberts, Giles & Co.,* for *Morgan Griffiths, Son & Prosser,* Carmarthen.

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

Court Papers.

TRINITY SITTINGS, 1944.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

Rota of Registrars in Attendance on

Date		Emergency Rota.	Appeal Court I.	Mr. Justice Morton.
Monday	June 26	Mr. Blaker	Mr. Hay	Mr. Farr
Tuesday	,, 27	Andrews	Farr	Blaker
Wednesday	,, 28	Jones	Blaker	Andrews
Thursday	,, 29	Reader	Andrews	Jones
Friday	,, 30	Hay	Jones	Reader
Saturday	July 1	Farr	Reader	Hay

Group A.

Date.		Mr. Justice Cohen. *Non-Witness.*	Mr. Justice Vaisey. *Witness.*	Mr. Justice Uthwatt. *Non-Witness.*	Mr. Justice Evershed. *Witness.*
Monday	June 26	Mr. Reader	Mr. Jones	Mr. Andrews	Mr. Blaker
Tuesday	,, 27	Hay	Reader	Jones	Andrews
Wednesday	,, 28	Farr	Hay	Reader	Jones
Thursday	,, 29	Blaker	Farr	Hay	Reader
Friday	,, 30	Andrews	Blaker	Farr	Hay
Saturday	July 1	Jones	Andrews	Blaker	Farr